



January 25, 2005

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte Submission, CS Docket Nos. 98-120; 00-96***

Dear Chairman Powell:

On October 29, 2004, Public Television wrote to you to support the extension of the Satellite Home Viewer Improvement Act (SHVIA) to the carriage of local digital broadcast television signals. Citing to public announcements by DIRECTV last Spring¹ and Fall² that it was poised to dramatically increase its capacity to carry local digital signals via satellite, Public Television has demonstrated that there has been a steady and certain increase in satellite capacity over the past year. Similarly, EchoStar also has publicly announced plans to significantly expand its capacity to carry local digital signals. For instance, EchoStar stated that it has plans after the DTV transition to “make available the down-converted HDTV feed of the local stations in the same number of DMAs [in which it is currently providing local service] that will be served at that time.”³ To support this expansion of capacity, EchoStar was awarded three new licenses (one of which was subsequently returned) on the strength of its explicit representations that it would offer additional local digital television signals to the public.⁴

¹ See *General Motors Corp, Hughes Electronics Corp and New Corp Ltd Seek Approval to Transfer Control of FCC Authorizations and Licenses Held by Hughes Electronics Corp to the News Corp Ltd*, Public Notice, DA 03-1725 (May 16, 2003), p. 3. See also <http://www.directv.com/DTVAPP/imagine/HDTV.jsp>, and Communications Daily, Satellite (June 5, 2003) (DIRECTV to add Discovery HD Theater, ESPN HD, HDNet and HDNet Movies).

² See Communications Daily (Sept. 9, 2004); and “DIRECTV Announces Plan to Launch Next Generation Satellites to Provide Dramatic Expansion of High-Definition and Advanced Programming Services,” Press Release, (Sept. 8m 2004) available at: <http://ir.thomsonfn.com/InvestorRelations/PubNewsStory.aspx?partner=5276&storyId=120007>.

³ Reply Comments of EchoStar, MB Docket 04-210, p. 9.

⁴ See In the Matter of EchoStar Satellite LLC Application for Authority to Construct, Launch and Operate a Geostationary Satellite Using the Extended Ku-band Frequencies in the Fixed-Satellite Service at the 109° W.L. Orbital Location, Order and Authorization, DA 04-3163, ¶ 2 (Sept. 30, 2004); In the Matter of EchoStar Satellite LLC Application for Authority to Construct, Launch and Operate a Geostationary Satellite Using the Extended Ku-band Frequencies in the Fixed-Satellite Service at the 83° W.L. Orbital Location, Order and Authorization, DA 04-3162, ¶ 2 (Sept. 30, 2004); and In the Matter of EchoStar Satellite LLC Application for Authority to Construct, (continued...)

Regrettably, EchoStar now has attempted to distance itself from its prior public announcements and Commission filings. In a letter dated January 14, 2005, EchoStar now complains that the extended Ku-band licenses it successfully applied for would not in fact be used for local digital television carriage and argues that the spectrum for which the satellites are licensed are subject to certain restrictions, such as rain attenuation and the presence of other services in the band,⁵ restrictions which are not technically insurmountable. Yet, despite this latest complaint about its lack of capacity, **in the span of a mere few days EchoStar later announced the purchase of even more satellite capacity from Cablevision's HD satellite VOOM service.**⁶ EchoStar's actions clearly demonstrate a deficit of credibility and should belie any claims it has made, or will make, regarding its inability to carry local DTV signals.

As recent developments demonstrate, the technical capacity for satellite-delivered local DTV stations is expanding by leaps and bounds. Both DIRECTV and EchoStar have continued to expand their carrying capacity, although only EchoStar continues to claim otherwise. This most recent expansion of satellite capacity should provide the Commission with convincing evidence that mandated digital carriage would not unnecessarily or unconstitutionally burden satellite capacity.

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Launch and Operate a Geostationary Satellite Using the Extended Ku-band Frequencies in the Fixed-Satellite Service at the 121° W.L. Orbital Location, Order and Authorization, DA 04-3164, ¶ 2 (Sept. 30, 2004).

⁵ Letter from EchoStar Executive Vice President and General Counsel David K. Moskowitz to Marlene H. Dortch, CS Docket 98-120 and MB Docket 03-15 (January 14, 2005), p. 10.

⁶ Press Release, "EchoStar to Purchase Satellite from Cablevision," (January 20, 2005) (announcing purchase of Rainbow 1, a direct broadcast satellite located at 61.5 degrees W.L. together with rights to 11 DBS frequencies at that location), available at: http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=665115. The satellite includes 13 frequencies, up to 12 of which can be operated in "spot beam" mode. *Id.*

For the reasons stated above, Public Television again respectfully urges the Commission to consider rules that guarantee access by satellite subscribers to all local digital signals.

Respectfully submitted,

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